



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/561,268

12/19/2005

Daniel Charles Underwood

01594.002100.

6539

5514 7590 05/21/2009  
FITZPATRICK CELLA HARPER & SCINTO  
30 ROCKEFELLER PLAZA  
NEW YORK, NY 10112

EXAMINER

MACARTHUR, VICTOR L

ART UNIT

PAPER NUMBER

3679

MAIL DATE

DELIVERY MODE

05/21/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/561,268	<b>Applicant(s)</b> UNDERWOOD, DANIEL CHARLES	
	<b>Examiner</b> VICTOR MACARTHUR	<b>Art Unit</b> 3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,6-14,16-18 and 27-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,6-14,16-18 and 27-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/17/2009 has been entered.

***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following must be shown or the feature(s) canceled from the claim(s):

- “concrete reinforcement bar” (lines 3-4 of claim 1, also claim 2)
- “mateable surfaces” (line 6 of claim 1, also claim 2)

No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the

Art Unit: 3679

drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Every element recited in the claims must be described in the written description with reference characters regarding the drawings; or those features must be deleted from the claims. Take for example the following examples:

- “concrete reinforcement bar” (lines 3-4 of claim 1, also claim 2)
- “mateable surfaces” (line 6 of claim 1, also claim 2)

### ***Claim Objections***

Claims 1, 2, 6-14, 16-18 and 27-29 are objected to because of the following informalities:

- Each element or step of the claims has not been separated by a line indentation.

See 37 CFR 1.75 and MPEP § 608.01(i)-(p).

Art Unit: 3679

- The phrases “concrete reinforcement bar” (lines 3-4 of claim 1, also claim 2) “mateable surfaces” (line 6 of claim 1, also claim 2) are not recited in the specification. Furthermore, it is unclear which drawing elements, if any, are represented by the above-mentioned phrases.

Appropriate correction is required. For purposes of examining the instant invention, the examiner has assumed these corrections have been made.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 2, 6-14, 16-18 and 27-29 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has not pointed out where the amended claims are supported, nor does there appear to be a written description of the following claim limitations in the application as filed such that these newly added limitations constitute new matter:

- “concrete reinforcement bar” (claims 1 and 2)
- “transversely extending mateable surfaces by which the retainer and seat section are progressively secured together by sideways sliding engagement of the mateable surfaces from a laterally offset position” (claim 1)

Art Unit: 3679

- “so that tension or compression applied to the bar is in a longitudinal direction” (claim 1)
- “and at the same time blocking longitudinal movement of the bar relative to the assembly” (claim 1)
- “the seat section and the retainer having transversely extending mateable surfaces by which the retainer and seat section are progressively secured together by sideways sliding engagement of the mateable surfaces from a laterally offset position” (claim 2).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 2, 6-14, 16-18 and 27-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term “progressively” as used in claims 1 and 2 is unclear. How are progressively secured elements different from non-progressively secured elements. Note that the written description does not set forth any antecedent basis for this limitation.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3679

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 6-14, 16-18 and 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Bazeley (U.S. Patent 1,672,867).

Bazeley discloses all of the applicants “bar connector” structure to include a body, a bar seat section and bar retainer.

Because the prior art structure is substantially identical to the claimed structure the PTO must presume claimed functions/properties to be inherent, thus presenting a *prima facie* case and properly shifting the burden to prove otherwise with evidence to the applicant. It is fairly the applicant's burden to obtain and test the prior art since the Patent Office is unable to manufacture or obtain prior art products. Mere allegation that the prior art does not inherently possess applicant's claimed functions/properties is not sufficient without actual evidence proving as much. See the following:

MPEP §2112.01 (I);

*In re Ludtke*, 441 F.2d 660, 664, 169 USPQ 563, 566 (CCPA 1971);

*In re Brown*, 459 F.2d 531, 535, 173 USPQ 685, 688 (CCPA 1972);

*In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433-34 (CCPA 1977);

*In re King*, 801 F.2d 1324, 1327, 231 USPQ 136, 138 (Fed. Cir. 1986);

*In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed.Cir. 1990);

*In re Schreiber*, 128 F.3d 1473, 1478 44 USPQ2d 1429, 1432 (Fed.Cir.1997)

Art Unit: 3679

Claims 1, 2, 6-14, 16-18 and 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Simons (U.S. Patent 271,141).

Simons discloses all of the applicants "bar connector" structure to include a body, a bar seat section and bar retainer.

Because the prior art structure is substantially identical to the claimed structure the PTO must presume claimed functions/properties to be inherent, thus presenting a *prima facie* case and properly shifting the burden to prove otherwise with evidence to the applicant.

### ***Response to Arguments***

Applicant's arguments with regard to the claim rejections have been fully considered but they are not persuasive.

Applicant argues that the prior art is not capable of performing applicant's functional limitations. This is not persuasive. As detailed in the rejections above the prior art sets forth all of applicant's claimed structure (what little there is). As of yet, applicant has failed to submit any evidence, much less proof, that the prior art structure is incapable of performing the claimed functions.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor MacArthur whose telephone number is (571) 272-7085. The examiner can normally be reached on 8:30am - 5:00pm.



Art Unit: 3679

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.

May 20, 2009

/Victor MacArthur/  
Primary Examiner, Art Unit 3679